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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/790,156

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John Carlson

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EXAMINER

ENG, DAVID Y

ART UNIT

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2155

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/790,156	Applicant(s) CARLSON ET AL.	
	Examiner DAVID Y. ENG	Art Unit 2155	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-20 and 28-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 and 31 is/are allowed.
- 6) ☒ Claim(s) 15-19, 28-30 and 32-35 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/1/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicants are requested to update the status of parent application on page 1 of the specification.

Claims 1-14 and 21-27 have been cancelled. Newly submitted claims 32-35 have been entered. The active claims are 15-20 and 28-35.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-19 and 28-30 and 32-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 15-16, there is no functional relationship between the components of claim 15 and the components of its parent claim 16. Scope of limitation of claims 16 and 15 is not clear. The claims merely recite communicating and passing configuration information between servers. No meaningful result or operation is seen from the claims. It is not seen how deriving state information is related to computing a weighted average.

Claims 28-29 have similar defects. There is no functional relationship between the steps. It is not clear in what order, with respect to the steps of parent claim 29, the steps of dependent claim 28 are executed. The claims merely recite communicating and passing configuration information between servers. No meaningful result or operation is

seen from the claims. It is not seen how deriving state information is related to computing a weighted average.

Other dependent claims are rejected also because of the defects of their parent claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-16 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Majkowski (USP 6,564,336).

#### **Claims 16, 15**

See at least Figure 1 in Majkowski. Majkowski teaches:

A distributed network management system (Figure 1), comprising:

a network server (remote server 30) capable of communicating with a network device (database line 22 column 2); and

means (TSS, see lines 18-23 column 2) associated with said network server for deriving state information (state of database) from said network device using a paradigm ("LTP") that includes polling (inherent in any monitoring system, the TSS of Majkowski is capable of initiating communication with the database so as to obtain state

of the database) said network device and using responses received from said network device to compute a weighted average over a plurality of time periods;

a hub server (10);

wherein said network server (remote server 30) is capable of communicating with said hub server (note that they are connected via a network); and

wherein configuration parameters for said network server to communicate with said network device can be propagated between said hub server and said network server bi-directionally (network communication is bi-directional).

Majkowski does not disclose using responses received from the network device to compute a weighted average over a plurality of time period. It would have been obvious to a person of ordinary skill in the art to use different algorithms as needed, such as weighted average, to analyze the data obtained from monitoring the network device such that the purpose of monitoring the device can be achieved.

#### **Claims 28, 29**

As to claims 28 and 29, they do not define above the invention claimed in claims 15 and 16 and therefore are rejected for the same reasons.


#### **Conclusion**

Claim 20 and 31 are allowed. Claims 17-19, 32-33, 30 and 34-35 will be given favorable consideration if the Section 112 second paragraph Rejection is overcome and the claims are rewritten in independent form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID Y. ENG whose telephone number is 571-272-3984. The examiner can normally be reached on M-F from 8AM to 3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SALEH NAJJAR, can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID Y. ENG  
PRIMARY EXAMINER